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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HERMINA BORCENA; et al.,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA; et al.,

Defendants - Appellees.

No. 04-56772

D.C. No. CV-04-03115-R

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Sisters Hermina Borcena and Apolonia Borcena, and Apolonia's son Sayed Tahamarzouk ("the Borcenas") appeal pro se from the district court's order dismissing with prejudice their Federal Tort Claims Act ("FTCA") action alleging

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

officials from the United States Department of Health and Human Services interfered with the operations of their medical laboratory. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1024 (9th Cir. 2001), and we vacate and remand.

We remand so that the district court may reconsider in light of intervening caselaw its apparent conclusion that the Borcenas failed to state an FTCA claim against the United States because there is no tort liability under California law for a “private individual under like circumstances.” *See United States v. Olson*, 126 S.Ct. 510, 512-13 (2005).

The parties shall bear their own costs on appeal.

VACATED and REMANDED.